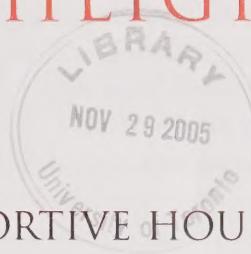




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LEGAL FRAMEWORK FOR SUPPORTIVE HOUSING FOR SENIORS: OPTIONS FOR CANADIAN POLICY MAKERS

INTRODUCTION

Supportive housing is a term used to describe a range of housing options designed to accommodate the needs of seniors¹ through design features, housing management, and access to support services. At one end of the range, supportive housing refers to congregate housing with supportive features and services such as monitoring and emergency response, meals, housekeeping, laundry and recreational activities. At the other end of the range (referred to in most North American jurisdictions as "assisted living") personal care services are also provided for frail seniors with more significant support needs. Professional services may be provided on a "home-care" basis in a supportive housing setting as they would be if the resident were living in a different kind of (non-supportive) residential setting.

Supportive housing² may be provided by either the public or the private sector, for profit or not for profit. In some cases, one provider will be responsible for delivering the whole supportive housing package (services plus housing). In other cases services and housing components will be delivered separately, by different sectors.

Supportive housing can be rented, purchased as a condominium in fee simple, or obtained through a "life lease."

Supportive housing is currently being developed to provide Canadian seniors with an intermediate housing alternative, between living alone without supports (staying at home) and the heavily regulated environment of institutional care. Achieving this objective requires an approach to regulation that balances necessary protections with the maximum choice and autonomy for each resident.

This study considers alternative approaches to the regulation of supportive housing for seniors and the kinds of issues that effective regulation will need to address, and sets out a range of options for Canadian policy makers.

OBJECTIVE

Future development of supportive housing that works from the perspective of both consumers (residents and potential residents) and providers will depend, to a certain extent, on the way in which supportive housing is regulated. The objective of this research was to assist with this process through the review of current approaches to regulation in different jurisdictions, the identification and assessment of issues arising in the supportive housing context, and the evaluation of different forms of regulation in terms of the extent to which they address those issues. The information, analysis, and conclusions are expected to be useful to policy makers and other stakeholders involved in developing and regulating supportive housing for seniors.

METHODOLOGY

The methodology to conduct this research consisted of three major parts:

- 1) Review of literature and legislation
- 2) Consultations with seniors/consumers and professional stakeholders
- 3) Evaluation

¹ In this report "seniors" are defined as people 65 years of age or older.

² Terminology varies significantly from province to province, and internationally; for simplicity and to facilitate comparison, the term "supportive housing" is used here to refer to housing with services for seniors regardless of government involvement and independent of any specific government program referring to "supportive housing" in its title or description.

Literature and Legislation Review

This first part of this research examined the many different ways in which supportive housing for seniors is regulated in Canada, the United States, Australia, and the UK; the various issues that are subject to regulation in each jurisdiction; and the various approaches to regulation.

Consultation with Seniors/Consumers and Professional Stakeholders

The second part of the methodology involved consultation with typical Vancouver seniors (with no specialised or professional knowledge of supportive housing) and with “professional stakeholders” (individuals and groups with special knowledge of and experience with supportive housing issues, including policy makers in government, seniors organisations and advocacy groups, academics, health authorities, and providers of supportive housing) in Vancouver and Victoria.³

The purpose of all regulation is to deal adequately and appropriately with the issues that arise in a particular context. Consultation was therefore carried out in two phases: “assessing the issues” (phase one) and “evaluating approaches to regulation” (phase two).

Consultation was designed to be user friendly for senior participants. The objective was to maximize comment and feedback. Seniors commented on issues such as how much training they thought staff should have and whether that level of training should be mandatory, for example. Despite the best efforts of the researcher to make the second phase of the consultation (“evaluating approaches to regulation”) as user friendly as possible, the subject matter proved to be more technical and less familiar to senior participants.

Assessing the Issues

During the first phase of consultation, participants were asked to comment on and rank in terms of importance the following issues associated with supportive housing:

- Information issues:
 - Access to information (where do I find out about supportive housing?)
 - Marketing/disclosure (what do I know about a residence before I move in?)
- Building quality and design features (availability of handrails in washrooms, for example)
- Affordability (how much will it cost? can I afford it?)
- Contracts (is the contract clear and understandable? what matters should be included?)
- Exit Criteria (when and why can I be asked to leave? what if I have nowhere else to go?)

- Services

- Costs (do I need to pay for each service separately, when can costs be raised and by how much?)
- Meals (frequency? quality? content?)
- Staff (how many? what kind of training is required?)
- Help with medications
- Complaints
- What if my needs increase? Are services sufficient to allow aging in place?
- Inspection (how often and by whom?)
- Dispute resolution (for example, what if the residence asks me to leave and I don’t think I should go? What if I think a cost increase for meals is unfair?)
- Special issues associated with tenure (ownership, rental and life lease)

Participants were also asked to identify and comment on any other issues that they felt arose in the supportive housing context.

Evaluating Approaches to Regulation

Participants were asked during the second phase of consultation to examine and evaluate the following four approaches to regulation:

- **No special regulation** (only existing regulations applying to residential tenancy, consumer protection, etc.)
- **Accreditation** (only residences meeting specified standards would be recognised as “accredited”)
- **Consumer protection** (legislation setting out requirements about information that must be supplied to consumers, notice periods, possible limits for cost increases, etc.)
- **Legislated minimum standards** (legislation requiring all residences to supply a minimum level of services and features; e.g., all staff to have a stipulated level of training, all residences to have a specified complaints procedure, etc.)

All participants were asked to comment on which approach was most appropriate for each of the issues identified in the first phase of consultation. Professional stakeholders were also asked whether “assisted living” should be treated differently for the purposes of regulation, and whether distinctions on the basis of type of provider (government, private not-for profit, and private for-profit) were appropriate.

³ The information obtained through this process provided a “snapshot” of opinion among those consulted rather than statistical data.

FINDINGS

People taking part in the 1999 Supportive Housing Review's consultations in British Columbia⁴ expressed concern that unnecessarily high mandatory standards ("heavy" regulation) could increase the costs of supportive housing to the extent that it would become unaffordable for most people. There was also strong agreement that requiring supportive housing to meet care facility licensing standards would reproduce the institutional look and feel of those facilities. Participants also expressed concern, however, that "light" regulation (i.e.: no special regulation outside of generally applicable legislation such as residential tenancy statutes) was inadequate and inappropriate given the special characteristics of supportive housing for seniors (combining housing and services) and the special needs of supportive housing residents. These concerns are shared by policy makers and other stakeholders across Canada, and internationally, as they work to develop an approach to regulation that is neither too "light" nor too "heavy."

Comprehensive and detailed "assisted living" statutes in many American states allow for a comparison of state regulation on an issue by issue basis. No similarly comprehensive statutes currently exist in Canada, and the approach to regulation varies significantly from province to province. In Nova Scotia and New Brunswick, for example, there is currently (as of the compilation of this research) no regulation applying specifically to supportive housing. Legislation in some other provinces sets mandatory standards in a limited number of areas or applies to a particular housing sector⁵ only. In British Columbia, recently implemented legislation draws distinctions between "assisted living" and other forms of supportive housing for the purposes of regulations applying to personal services, although tenure matters and hospitality services are subject to the same form of regulation in all supportive housing (including "assisted living").

Despite the difference in approaches to regulation, there are important similarities between Canada and the United States. For example, in both countries the supply of rental supportive housing by the private for-profit and private not-for-profit sector is relatively well developed.

In the United Kingdom, by contrast, rental supportive housing (or "sheltered housing" in the English terminology) is mostly supplied by the public sector. Legislation applies generally to public housing and to the local authorities providing supportive housing. A voluntary accreditation scheme developed by a Centre for

Excellence in Sheltered Housing is increasingly being used by local authorities as a mandatory standard for subsidized supportive housing. Private sector supportive housing is primarily for purchase, and codes and regulations relating to home buyer's protection apply.

In Australia, supportive housing in the form of "retirement villages" has been popular for many years. Each state and territory, other than Tasmania, has enacted specific legislation that regulates the operation of retirement villages. There are at least eight different legal structures and legislation is different in each jurisdiction.⁶ Australia's *Aged Care Act 1997* incorporates the regulation of both "hostel" residences (offering accommodation with hospitality services and some personal care services) and "nursing homes" (a facility providing the highest level of care). Australian legislation also provides for a housing information hotline and system of advocates; an "Aged Care Complaints Resolution Scheme;" and a legislated accreditation agency.

Special Regulation

All seniors participating in the consultations felt that special regulation was necessary; a very few professional stakeholders expressed the opinion that existing legislation was sufficient. Where supportive housing has been excluded from residential tenancy legislation of general application,⁷ special regulation may be necessary to fill the gap.

Accreditation

Accreditation programs are currently being used in a number of jurisdictions⁸ as either a complement to minimum legislated standards or in place of legislated standards. The assumption is that accredited residences will be more attractive to consumers and therefore more successful. However, effective market regulation is only possible where consumers are able to exercise real and meaningful choice. This requires:

- Real alternatives (taking into account affordability and location). However, cost can be the dominant factor driving seniors' housing choices, and an un-accredited provider can be preferred over a superior accredited provider if the cost is lower.
- No special circumstances affecting seniors' ability to exercise choice. Moving, for instance, can be a difficult, even traumatic, process for some seniors, e.g., those who are frail.

⁴ These consultations were public and conducted by the Government of British Columbia just before the implementation of the second phase of consultation regarding this research.

⁵ For instance, Saskatchewan's Personal Care Homes Act applies to the for-profit private sector only.

⁶ "It's Your Life" Retirement Village Information, 2001-2005 (<http://www.itsyourlife.com.au/>)

⁷ In British Columbia, for example.

⁸ For example, non-legislated accreditation programs exist in Ontario and in Quebec, where they are respectively offered by a provider group, the Ontario Residential Care Association (ORCA), and by a non-profit organisation, the Fédération de l'âge d'or du Québec (FADOQ).

- Consumer knowledge. Accreditation requires a fairly high degree of consumer knowledge. Consumers must be aware of the program, and know how to access information about it. Pro-active methods of connecting consumers to information may be a pre-requisite for an effective accreditation program. However, consultation indicated that seniors had a very low level of knowledge about supportive housing, and where to find information about it.

Seniors indicated a strong preference for the involvement of multiple stakeholders (representing both consumers and providers) in developing accreditation standards, and preferred a university or non-profit organisation based accreditation system to a system administered by a provider group.

Consumer Protection Legislation

Consumer protection legislation protects the consumer's right to receive the kind and level of service promised by the provider (as opposed to requiring that certain kinds or levels of services be provided, as under minimum legislated standards). Each supportive housing residence would be able to decide which services to offer, and to set the prices of those services, but would be required to provide all prospective residents with complete information about those services (including cost) and could not make changes without adequate notice (the required notice period would be set out in the legislation).

Seniors and professional stakeholders emphasised that adequate consumer protection must take into account the special characteristics of seniors. Notice periods need to be longer than notice periods that would be adequate in other settings; seniors as a group find the process of moving more difficult than younger people. The question of housing choice was also identified as relevant; seniors' choice of affordable, local supportive housing is likely to be much narrower than the range of housing options that are available to younger housing consumers.

Minimum Legislated Standards

Reproducing the institutional licensing model through comprehensive and detailed legislated standards is not feasible — supportive housing is being developed as an alternative to institutional living. An alternative approach would be to legislate minimum standards on certain core issues and to regulate other issues through different methods such as accreditation or using a consumer protection approach. Minimum standards would ensure that residents of a residence opting out of an accreditation program would enjoy a basic level of protection. Beyond those minimum standards, the market could work to keep standards high (assuming sufficiently informed consumers).

One objective of the first phase of consultation ("assessing the issues") was to create a ranking that would identify those core issues. No clear hierarchy emerged, however. The responses indicated a generally high level of interest in and concern about almost all of the issues assessed. "Cost" and "information" were two issues that emerged through commentary (in addition to ranking) as particular concerns. These issues are the least likely to be effectively addressed through legislated standards.

Options for Canadian Policy Makers

The task for regulators is to facilitate supportive housing for seniors that is both appropriate and affordable, through regulation that is neither too "heavy" nor too "light." This balance will best be achieved through a combination of approaches to regulation (see Options 1 and 5, below), together with supplemental non-regulatory initiatives (Options 2, 3, 4 and 6).

A consumer protection approach to regulation must take into account and provide for the special characteristics of supportive housing and of seniors as housing consumers. Minimum legislated standards, applying to only a few key issues, may also be necessary, especially in the context of "assisted living" intended for frailler seniors whose ability to exercise consumer rights (by choosing to move, for example) might be diminished. Higher standards (above and beyond any baseline set by minimum legislated standards) can be promoted by accreditation schemes, but compliance may need to be encouraged at the low-cost end of the range by insisting on accreditation as a requirement for public funding or subsidy.

The success of both consumer protection and accreditation programs depends on two factors:

1. adequate choice for consumers
2. adequate information for consumers

These two factors are inter-related to the extent that the effective exercise of choice depends on adequate information. Choice in this context also depends on an adequate supply of affordable supportive housing, enabling consumers to make real choices between housing options (between an accredited over a non-accredited residence, for example, or to move elsewhere upon being given notice that e.g., housekeeping rates will rise). Where consumers are ill-informed or unable to choose, more and higher legislated standards are required, especially regarding "assisted living."

This research indicates the following options for improving and maintaining standards in supportive housing for seniors, protecting the rights and interests of residents, and facilitating access to information about supportive housing for seniors.

Option 1: Develop a comprehensive supportive housing statute

A comprehensive supportive housing statute would apply to all supportive housing for seniors, regardless of sector involvement (public, private for-profit, and private not-for-profit), with supportive housing for seniors defined as housing with services that is provided specifically for seniors. The statute could include legislated minimum standards for certain issues, and provisions applying a consumer protection approach for other issues (meals could be subject to legislated standards and costs subject to consumer protection based provisions, for example).

A benefit of this option would be the relative clarity of the single statute approach for providers, consumers and their advocates, and for policy makers. This clarity, in turn, would promote coherent and consistent development of regulation both within and among Canadian jurisdictions. Coherent national development is important for two reasons. First, consistency avoids the need to constantly “reinvent the wheel” as jurisdictions are able to discuss their experiences and learn from each other’s mistakes. These processes require the development of a common language around supportive housing, a development which is made more difficult where supportive housing issues are dealt with in/by multiple statutes and authorities within a single province. Second, older Canadians are mobile, and retirement or age related lifestyle changes may trigger a move closer to adult children or other relatives, or to a more suitable climate. The current widely divergent approaches to the regulation of supportive housing in Canada, divided between different regulatory instruments within provinces, creates a formidable information challenge for the potential supportive housing resident who wants to move, for example, from Toronto to Victoria.

The model statute outlined in the Report reflects the findings of the first phase of consultation, which indicated a high level of concern about almost all of the issues identified (with no ranking of “core” issues emerging). The model does not specify which issues should be dealt with through legislated standards, and which should be dealt with through consumer protection provisions. That choice is ultimately a policy decision. A statute based on the model outline would include provisions relating to:

- Rights and responsibilities of residents
- Issues relating to rental, purchase, and life lease tenure
- Mandatory standards
- Special standards in “assisted living”
- Information to be provided to residents

The statute would include a “checklist” of questions and answers to be made available to prospective residents.

Option 2: Establish a system of “elder ombudsmen”

Each province would appoint an “elder ombudsman” with responsibility for seniors housing issues and also, possibly, with a mandate to hear and respond to other concerns. The objective would be to set in place a “one stop shop” easy to access system for finding information, making complaints, and resolving disputes and other kinds of problems. If economically feasible, a system of seniors’ advocates could operate out of an ombudsman’s office.

Option 3: Create national “best practices” guidelines

A third option would be to establish a working group at the national level which would create “best practices” guidelines (drawing on the American model). As provinces across Canada consider the question of regulation, a national working group would facilitate the sharing of experiences and avoid the unnecessary duplication of steps. It is currently difficult to make inter-provincial comparisons, in part because of divergent terminologies, in part because of different approaches taken with regard to responsibility (the question of which government department or body is responsible for the development of supportive housing, including the issue of regulation).

The working group would not be constituted as a permanent body. Conclusions and recommendations of the working group would be further developed by a permanent centre of excellence (see Option 4, below).

Option 4: Establish a supportive housing for seniors “centre of excellence”

Building on the work of the national working group described in Option 3, the centre would create a model “Code of Practice” for accreditation; policy makers may choose to incorporate the model Code into provincial accreditation requirements or to use elements of the Code as the basis for a provincial program. The centre would also serve as a focal point for the continuing exchange of information and experiences across Canadian jurisdictions.

Regulation of supportive housing is a matter for each province, but the issues and concerns raised in each jurisdiction will be substantially the same. There is a key role for a central body to develop models, guidelines, and best practices that could then be implemented at the provincial or municipal levels. A university could be the most appropriate body to house The Centre of Excellence which would carry out this work on a continuing basis.

Option 5: Establish a (non-legislated) system for accreditation

An accreditation system could be developed in a university based "centre of excellence" with input from consumers and providers as well as academics. The centre would be responsible for carrying out accreditation, and gather and disseminate information about the system (in connection with a general information database; see Option 6, below). A non-legislated university based system for accreditation would be an alternative to an accreditation system established by and within a comprehensive supportive housing statute (see "Option 1").

Accreditation could be a prerequisite for receipt of government funding (government funding also then becomes an incentive for accreditation). Tying accreditation to the availability of subsidy addresses the question of non-accredited, substandard residences which would market themselves to low income seniors solely on the basis of price.

Option 6: Establish a central information database

Establishment of a central information database accessible through the Internet and through a seniors housing "hotline" is important to the success of supportive housing as an intermediate housing alternative. Information provided would include availability, costs, and rules or conditions of residency. A senior who wishes to relocate would be able to access information about the availability of supportive housing in another province, and the way in which supportive housing is regulated in that province.

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Research Report: *A Legal Framework for Supportive Housing for Seniors: Options for Canadian Policy Makers*

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